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## State v. Hamlin Respondent's Brief Dckt. 40026

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 40026
Plaintiff-Respondent,	)	
	)	Elmore Co. Case No.
vs.	)	CR-2010-4031
	)	
DENVIL R. HAMLIN,	)	
	)	
Defendant-Appellant.	)	

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BRIEF OF RESPONDENT

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APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ELMORE

---

HONORABLE BARRY WOOD  
District Judge

---

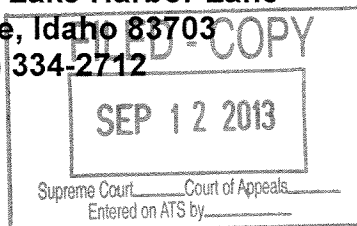
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## STATEMENT OF THE CASE

### Nature Of The Case

Denvil R. Hamlin appeals from his judgment of conviction for sexual exploitation of a vulnerable adult. On appeal, he argues that the district court erred by denying his motions to dismiss the case and suppress evidence.

### Statement Of The Facts And Course Of The Proceedings

Between May 1, 2009, and July 13, 2010, Hamlin sexually abused W.M. on multiple occasions. (PSI, pp.2-3.) Hamlin knew that W.M. had mental deficiencies and required someone else to take care of him. (PSI, pp.53-54.) Despite this, Hamlin admitted engaging in mutual masturbation with W.M., committing fellatio on W.M., and sodomizing W.M.<sup>1</sup> (PSI, pp.3, 54-55.) Hamlin told W.M. to keep the sexual encounters a secret. (PSI, pp.2, 53-55.) After W.M. told someone what happened and Hamlin was arrested, Hamlin threatened to kill W.M. (PSI, pp.3, 42.) Hamlin later claimed he was only joking. (PSI, p.3.)

The victim, W.M., is a vulnerable adult. In addition to suffering from mild mental retardation, he has been diagnosed with schizoaffective disorder. (PSI, p.53, 61.) His physician explained that he suffers hallucinations and hears voices commanding him to do things. (Id.) His mind is that of a child, with interests like eating ice cream, playing video games, and watching movies. (Id.) W.M.'s case manager also described him as "very much like a child. He can't make decisions." (PSI, p.2.) She related:

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<sup>1</sup> This was not Hamlin's first predatory act. In the mid 1980s, Hamlin admitted to sexually molesting a 10-year-old by twice placing his penis between the 10-year-old's legs, though he denied penetration. (PSI, p.4.) In 2010, Hamlin was also alleged to have molested his great niece. (Id.)

When I first started working with him, he wouldn't shower, shave, bathe. I would make him go take a shower before I would take him anywhere. Sometimes he would come out of the shower and still stink. I would make him go bathe again.

(Id.) As soon as W.M. was able to talk about what Hamlin had done to him, he began to take care of himself again, leading his caseworker to believe that W.M. allowed his hygiene to deteriorate in the hopes that Hamlin would stop sexually abusing him. (Id.) W.M.'s caseworker also learned that Hamlin had taken advantage of W.M. financially. Hamlin tried to use W.M. to withdraw money from W.M.'s bank account, and he also opened a utility account for himself in W.M.'s name. (PSI, pp.2, 53-54.)

The state charged Hamlin with three counts of sexual abuse of a vulnerable adult. (R., pp.109-11.) Throughout the proceedings, defense counsel expressed concern regarding Hamlin's competency. (See R., pp.59-69, 136-37, 184-85.) Though Hamlin had been found competent to proceed during the preliminary phases of the prosecution, the district court ordered another competency evaluation and appointed Dr. Sombke, who had previously worked with Hamlin. (R., pp.169-70, 191-92, 240.) Dr. Sombke opined that Hamlin was marginally competent to proceed (R., p.192) and the district court found that Hamlin was competent (R., pp.240-41). However, the district court also offered "[i]f defense counsel now believes Hamlin's competency has deteriorated, the Court will leave this to counsel to file the appropriate motion." (R., p.241.) Defense counsel never filed a follow-up motion.

Hamlin filed several other motions: He filed a motion to dismiss on the ground that the prosecution violated his equal protection and due process rights (R., pp.125-27, 172-78); he filed a motion *in limine* seeking to exclude evidence of his financial exploitation of W.M. (R., pp.128-29); and he filed a motion to suppress his confession



on the ground that his Miranda<sup>2</sup> rights were not “intelligently” waived (R., pp.130-31, 179-81). The district court granted Hamlin’s motion *in limine* while denying his motions to dismiss the prosecution and suppress evidence. (R., pp.233-41.)

Hamlin entered into a binding plea agreement with the state under which he pleaded guilty to all three counts of sexual abuse of a vulnerable adult, reserved the right to appeal the denials of his pretrial motions, and agreed to a suspended sentence of ten years with two years fixed and a ten year term of probation. (R., pp.260-63.) The district court entered judgment against Hamlin and, pursuant to the plea agreement, imposed a suspended sentence of ten years with two years fixed and placed Hamlin on probation for ten years. (R., pp.267-70.)

Hamlin filed a timely notice of appeal. (R., pp.278-80.)

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<sup>2</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

## ISSUES

Hamlin states the issue on appeal as:

Did the district court err when it denied Mr. Hamlin's motions to dismiss and suppress?

(Appellant's brief, p.7.)

The state rephrases the issues as:

1. Has Hamlin failed to establish that the district court abused its discretion by determining that Hamlin was competent to proceed after multiple evaluations found him competent to proceed?
2. Hamlin has failed to show that his prosecution for sexually abusing W.M., a vulnerable adult, violates either his equal protection or due process rights. Has Hamlin therefore failed to show that the district court abused its discretion by denying his motion to dismiss the criminal proceedings?
3. Has Hamlin failed to show that the district court erred when it found that he was not in custody equivalent to formal arrest, and therefore the dictates of Miranda did not apply?

## ARGUMENT

### I.

#### Hamlin Has Failed To Establish That The District Court Abused Its Discretion By Determining That Hamlin Was Competent To Proceed After Multiple Competency Evaluators Found Hamlin Competent To Proceed

##### A. Introduction

Hamlin is mildly mentally retarded. (9/15/2010 Sombke eval., p.4.) After Hamlin had already been found competent in the magistrate court, defense counsel, concerned about Hamlin's continuing competence, requested that the district court order another competency evaluation. (R., pp.136-37) The district court ordered the evaluation, appointing Dr. Sombke. (R., pp.169-70.) Dr. Sombke found Hamlin marginally competent to proceed, though he expressed some reservations as to whether Hamlin should testify. (8/29/2011 Sombke eval., p.6.) Based on Dr. Sombke's report, defense counsel filed a motion to dismiss the case, arguing that Hamlin lacked the mental competency to stand trial. (R., pp.184-85.) The district court denied Hamlin's motion, noting that Hamlin had already been found competent previously and that Dr. Sombke's evaluation found Hamlin competent. (R., pp.240-41.) Review of the record establishes that the court's competency determination was supported by competent evidence.

##### B. Standard Of Review

"On appeal, this Court does not reweigh the evidence regarding competency, but will affirm the district court's finding if it is supported by sufficient, competent evidence, even if the evidence is conflicting." State v. Al-Kotrani, 141 Idaho 66, 70, 106 P.3d 392, 396 (2005) (citing State v. Lovelace, 140 Idaho 53, 90 P.3d 278 (2003)).

C. Sufficient, Competent Evidence Supports The Court's Competency Finding

Due process prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Indiana v. Edwards, 554 U.S. 164, 169-70 (2008); Lovelace, 140 Idaho at 62, 90 P.3d at 287. The test for determining a defendant's competence to stand trial is whether he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him." Lovelace, 140 Idaho at 62, 90 P.3d at 287 (citing Dusky v. United States, 362 U.S. 402 (1960)); accord I.C. § 18-210. To safeguard this due process right, Idaho statutory law requires a trial court to order a psychological evaluation when there is a genuine reason to doubt the defendant's competence to assist in his own defense or understand the proceedings. I.C. §§ 18-210 and 18-211. A defendant's fitness to proceed to trial is determined by the trial judge, who has a "continuing duty to observe a defendant's ability to understand the proceedings against him." State v. Longoria, 133 Idaho 819, 822, 992 P.2d 1219, 1222 (Ct. App. 1999) (citing State v. Potter, 109 Idaho 967, 969, 712 P.2d 668, 670 (Ct. App. 1985)); see also I.C. § 18-212.

The United States Supreme Court has said, "[t]here are ... no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed ...." Drope v. Missouri, 420 U.S. 162, 180 (1975). "[E]vidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required." Id. Other relevant factors include trial counsel's perceptions of the defendant's competence, the defendant's communications with the district court, and the

defendant's ability to use legal terms appropriately. See State v. Hayes, 138 Idaho 761, 764-65, 69 P.3d 181, 184-85 (Ct. App. 2003); United States v. Landers, 564 F.3d 1217, 1221 (10th Cir. 2009); Williams v. Woodford, 384 F.3d 567, 606 (9th Cir. 2004); United States v. Quintieri, 306 F.3d 1217, 1233 (2nd Cir. 2002); United States v. Lewis, 991 F.2d 524, 528 (9th Cir. 1993).

Examining the record as a whole, the district court's determination that Hamlin was competent is supported by substantial evidence. Hamlin's competency was thoroughly evaluated during the proceedings below. (See 9/15/2010 Sombke eval.; 11/17/2010 Brumfield eval.; 12/6/2010 Sanford eval.; 1/6/2011 Stumph eval.; 1/12/2011 Brumfield eval.; 1/25/2011 Sanford eval.; 8/24/2011 Sombke eval.) Initially, Dr. Sombke found that

Hamlin was not able to adequately answer and elaborate on court related questions. He showed limited factual knowledge and limited rational understanding of courtroom procedures and his ability to appropriately consult with his attorney [was] also limited.

(9/15/2010 Sombke eval., p.5.) Dr. Sombke administered the CAST-MR, "a validated instrument designed to provide information on competence to stand trial in defendants with mental retardation," to Hamlin. (Id., p.4.) While Hamlin scored a 9/10 on understanding case events, he only scored a 12/25 on basic legal concepts and an 8/15 on skills to assist defense. (Id.) Hamlin's total score of 29/50 was far below the 37/50 for people with mental retardation who are normally found competent to stand trial. (Id.) As a result of the examination, Dr. Sombke opined that Hamlin lacked competence at that time, but that "it [was] possible that with some education and training of the court process, Mr. Hamlin could become competent in the future." (Id., p.6.)

Adhering to Dr. Sombke's prescription, Hamlin received "education and training of the court process" from the Department of Health and Welfare, and his scores improved dramatically. In a retest, Hamlin scored 20/25 on basic legal concepts and 15/15 on skills to assist defense. (11/17/2010 Brumfield eval., p.2.) Hamlin sought a second opinion and received an evaluation from Dr. Sanford. (12/6/2010 Sanford eval.) Dr. Sanford did not administer the CAST-MR, the "validated instrument designed to provide information on competence to stand trial in defendants with mental retardation" (9/15/2010 Sombke eval., p.4), instead using the open-ended MacCAT-CA (12/6/2010 Sanford eval., pp.4-5). Hamlin did not test well on the examination *not* meant for individuals affected by mental retardation, and Dr. Sanford therefore opined that Hamlin was not competent, apparently due to Hamlin's mental retardation. (See Id.)

Hamlin continued to receive training from Health and Welfare and was twice more examined using the CAST-MR. (1/6/2011 Stumph eval., p.2; 1/12/2011 Brumfield eval., p.4.) Each time Hamlin scored in the competent range and "demonstrate[d] consistent learning and retention across time and settings of the subject matter." (Id.) After weighing the ostensibly conflicting reports, the magistrate found Hamlin competent to proceed. (R., p.240.)

Expressing concerns about Hamlin's continuing ability to retain his competency training, defense counsel requested an additional competency evaluation. (R., pp.136-37.) The district court ordered the evaluation, appointing Dr. Sombke. (R., pp.169-70.) "As a result of the information and observations obtained during [that] evaluation, it [was Dr. Sombke's] opinion that Mr. Hamlin currently appear[ed] marginally competent to proceed." (8/24/2011 Sombke eval., p.6.) Thus, there is substantial, competent

evidence in the record which supports the court's determination that Hamlin was competent to proceed.

On appeal, Hamlin argues that he could not assist in his own defense because, "Dr. Sombke believed that Mr. Hamlin was incapable of testifying in his own defense." (Appellant's brief, pp.21-22.) Dr. Sombke's concerns centered on whether Hamlin would be able to fully comprehend questions and whether he would volunteer answers to questions he did not understand. (See 8/24/2011 Sombke eval., pp.5-6.) But the legal standard for competence does not require a defendant to be able to effectively testify in his own behalf; a defendant must simply be able to rationally consult with his attorney, see Lovelace, 140 Idaho at 62, 90 P.3d at 287, which Dr. Sombke's evaluation demonstrated Hamlin was capable of doing (see 8/24/2011 Sombke eval., p.5). As the district court correctly noted, "[w]hether the Defendant would be as sophisticated a witness as some may wish is not determinative." (R., p.240.) Hamlin has failed to show that the district court's competency determination lacks the support of sufficient, competent evidence.

Furthermore, even if there had been additional concerns regarding Hamlin's continuing competence, the district court offered, "[i]f defense counsel now believes Hamlin's competency has deteriorated, the Court will leave this to counsel to file the appropriate motion." (R., p.241.) Defense counsel, apparently satisfied with Hamlin's competence, never filed a follow-up motion.

Nothing in the record creates a genuine doubt as to Hamlin's ability to understand the nature of the proceedings against him or assist in his own defense. The

court's finding that Hamlin was competent is supported by substantial, competent evidence and should be affirmed.

## II.

### Hamlin Has Failed To Show That His Prosecution For Sexual Abuse Of A Vulnerable Adult Violated Either His Equal Protection Or Due Process Rights

#### A. Introduction

Hamlin filed a motion to dismiss his case on the ground that his prosecution for the crime of sexually abusing a vulnerable adult violated his equal protection and due process rights. (R., pp.125-27, 172-78.) The district court concluded that neither was violated and denied Hamlin's motion. (R., pp.238-39.) Application of the correct legal standards to the facts of this case shows no abuse of discretion by the district court.

#### B. Standard Of Review

"This Court reviews a district court's decision on a motion to dismiss a criminal action for an abuse of discretion." State v. Martinez-Gonzalez, 152 Idaho 775, 778, 275 P.3d 1, 4 (Ct. App. 2012) (citing State v. Dixon, 140 Idaho 301, 304, 92 P.3d 551, 554 (Ct. App. 2004); I.C.R. 48(a)).

#### C. Hamlin's Prosecution and Conviction For Sexual Abuse Of A Vulnerable Adult Violates Neither His Equal Protection Nor His Due Process Rights

Hamlin argues that "his prosecution for sexual abuse of a vulnerable adult denied him equal protection under the law and due process." (Appellant's brief, pp.8-16.) Application of the correct legal standards to the facts of this case shows that Hamlin suffered no violation of his constitutional rights by being prosecuted for his sexual abuse of W.M., a vulnerable adult.



1. Hamlin's Prosecution Did Not Violate Equal Protection

Hamlin asserts that his prosecution under Idaho Code § 18-1505B violated his equal protection rights under both the United States and Idaho State Constitutions. (Appellant's brief, pp.8-13.) When addressing an equal protection claim, the Court identifies the classification under attack, articulates the standard under which the classification will be tested, and then determines whether the standard has been satisfied. Coghlan v. Beta Theta Pi Fraternity, 133 Idaho 388, 395, 987 P.2d 300, 307 (1999). "An act of the legislature is presumed to be constitutional, but whether the act is reasonable or arbitrary or discriminatory is a question of law for determination by this Court." Id. (citations omitted).

Idaho Code § 18-1505B makes it "a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party," to engage in sexual conduct with a vulnerable adult. I.C. § 18-1505B. To show that equal protection applies to a prosecution, a defendant must show that an identifiable class of persons is being singled out for prosecution. See Lawrence v. Texas, 539 U.S. 558, 584 (2003) (O'Connor concurring). On its face, Idaho Code § 18-1505B applies to "any person." The statute thus treats no identifiable group differently for purposes of prosecution, and therefore does not implicate equal protection, much less violate equal protection.

Hamlin claims that the classification at issue in this case is that of a "vulnerable adult." (Appellant's brief, pp.9-13.) He cites no law, however, allowing a criminal defendant to challenge the statute underlying his prosecution on the basis of his *victim's* classification. Indeed, there is no basis for the argument that legislation singling out a

vulnerable minority for *protection*, as opposed to *prosecution*, must undergo any level of heightened scrutiny.

Assuming, *arguendo*, that the *defendant* has standing to raise a third-party challenge to the classification of the *victim* of a crime, Hamlin has still failed to show a violation of equal protection. Under the statute, a “vulnerable adult” is defined as:

a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person’s judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.

I.C. 18-1505(e). Classifications dealing with the whole spectrum of mentally disabled individuals are reviewed under the rational basis standard. City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 446 (1985). Under both the United States and Idaho State Constitutions, “a classification will survive rational basis analysis if the classification is rationally related to a legitimate governmental purpose” and “there is any conceivable state of facts which will support it.” Meisner v. Potlach Corp., 131 Idaho 258, 262, 954 P.2d 676, 680 (1998) (citations omitted). The government has a legitimate interest in protecting vulnerable adults from sexual abuse and exploitation. Legislation which prevents the sexual abuse and exploitation of vulnerable adults is rationally related to this legitimate interest. Therefore, Idaho Code § 18-1505B does not violate equal protection.

On appeal, Hamlin argues that Idaho Code § 18-1505B violates equal protection by criminalizing sexual behavior between consenting adults because “[a] vulnerable adult is not defined as a person lacking the ability to consent to sexual activity.” (Appellant’s brief, p.12.) In fact, the statutory definition of vulnerable adult is broader

than merely a person lacking the ability to consent to sexual activity. A vulnerable adult must be “unable to protect himself from abuse ... or exploitation” due to an impairment which renders him *incapable* of making “decisions regarding his person.” I.C. § 18-1505. “[D]ecisions regarding his person” include, but are not limited to, decisions regarding sexuality. The statute, therefore, does not criminalize sexual relationships between consenting adults because vulnerable adults, by definition, are incapable of giving consent.

Hamlin also argues that there is no rational basis to charge one vulnerable adult with a crime and not the other where both are vulnerable adults. (Appellant’s brief, pp.12-13.) Rational basis review is a standard of statutory interpretation, not a standard for individual charging decisions. Hamlin has offered no authority for the proposition that the state is required to demonstrate a rational basis for its particular charging decisions and this argument should not be considered on appeal. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

By arguing that the state lacks a rational basis to charge one vulnerable adult and not another, Hamlin may be attempting to raise a selective prosecution claim. Prosecutorial discretion is not unfettered; selectivity in the enforcement of laws is subject to constitutional constraints. Wayte v. United States, 470 U.S. 598, 608 (1985) (citation omitted). “The decision to prosecute may not be deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.” Id. (internal quotations omitted). A defendant raising a claim of selective prosecution must “show both that the passive enforcement system had a discriminatory effect and that it

was motivated by a discriminatory purpose.” Id. (citations omitted). Hamlin has not even attempted to make such a showing.

Moreover, in the context of this case, Hamlin’s argument is irrelevant. That W.M. is a vulnerable adult is uncontested. (R., p.173; see also PSI, pp.89-211.) Hamlin’s argument rests on his assertion that he, too, is a vulnerable adult. He is not. While the record establishes that Hamlin is mildly retarded (See 9/15/2010 Sombke eval., p.4), it does not establish that he is a vulnerable adult. “[P]hysical or mental impairment,” while a necessary condition to being a “vulnerable adult” is not a sufficient condition; the impairment must “affect[] the person’s judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.” I.C. § 18-1505.

Hamlin does not meet the statutory definition of vulnerable adult. Though he is affected by a mental impairment, no court has ever determined that Hamlin is unable to make decisions on his own. (10/3/2011 Tr., p.48, L.21 – p.49, L.1.) In fact, despite his difficulties, Hamlin “is able to function adequately in the community and he gets his needs met fairly well.” (PSE, p.3.) He was able to get married and maintain that relationship and has obtained employment in menial labor. (Id.) Because he is not a vulnerable adult, Hamlin has failed to show how charging him with sexually abusing and exploiting W.M., who is a vulnerable adult, violates equal protection.

## 2. Hamlin’s Prosecution Did Not Violate Due Process

Hamlin also argues that the statute is unconstitutional as it applies to this case, asserting that it criminalizes consensual sexual conduct. (Appellant’s brief, pp.13-16.) To show that a statute is unconstitutional “as applied,” the party making the claim must

“show that, as applied to the defendant’s conduct, the statute is unconstitutional.” American Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Resources, 143 Idaho 862, 870, 154 P.3d 433, 441 (2007) (citing State v. Korsen, 138 Idaho 706, 69 P.3d 126 (2003). “[W]hen a statute can be applied to a person’s conduct without violating any constitutional provision, he will not be heard to assert that the statute might be unconstitutional if applied to other types of behavior.” State v. Goodrick, 102 Idaho 811, 812, 641 P.2d 998, 999 (1982); see also Matter of Heth, 114 Idaho 893, 894-95, 761 P.2d 1245, 1246-47 (Ct. App. 1988).

The conduct at issue here was Hamlin sexually abusing W.M., a vulnerable adult. Although the government might lack a legitimate interest in regulating a private sexual relationship between consenting adults (and thus may not constitutionally do so), the state may constitutionally regulate nonconsensual sexual conduct. State v. Cook, 146 Idaho 261, 262, 192 P.3d 1085, 1086 (Ct. App., 2008). As noted above, vulnerable adults by definition cannot give consent. See I.C. § 18-1505. Though Hamlin may have “clearly asserted that the conduct in this case was consensual” (Appellant’s brief, pp.15-16), his naked assertion does not make it so.

Having failed to show that the sexual acts committed upon W.M. were either legally or factually consensual, Hamlin has not carried his burden of demonstrating that the government could not constitutionally regulate the conduct he engaged in. Hamlin has failed to show a violation of his due process rights. He has therefore failed to show that the district court abused its discretion by denying his motion to dismiss.

### III.

#### Hamlin Has Failed To Establish That He Was In Custody Such That *Miranda* Applies To The Admissions He Volunteered To Police

##### A. Introduction

Hamlin filed a motion to suppress his confession on the basis that the voluntary waiver of his Miranda rights was not “intelligent” because he is mildly retarded. (R., pp.179-81.) The district court denied Hamlin’s motion on the ground that Hamlin was not in custody when he made the incriminating statements, so the dictates of Miranda did not apply. (R., pp.235-36.) Application of the correct legal standards to the facts found by the district court shows no error in the district court’s determination that Hamlin was not in custody for purposes of Miranda.

##### B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court’s findings of fact that are supported by substantial evidence, but freely reviews the application of constitutional principles to those facts. State v. Diaz, 144 Idaho 300, 302, 160 P.3d 739, 741 (2007). Likewise, the determination of whether police are required to provide Miranda warnings presents a mixed question of law and fact. State v. Silva, 134 Idaho 848, 854, 11 P.3d 44, 50 (Ct. App. 2000). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995).

C. Hamlin Was Not In Custody During His Interview With Detective Larsen

To safeguard the privilege against self-incrimination afforded by the Fifth Amendment of the United States Constitution, the United States Supreme Court held in Miranda v. Arizona that before an individual is subjected to custodial interrogation, the interrogating officers must advise the individual of certain rights, including the right to remain silent. Id., 384 U.S. at 478-79. Miranda rights may not be invoked, however, unless a defendant is in custody equivalent to formal arrest. State v. Hurst, 151 Idaho 430, 436, 258 P.3d 950, 956 (Ct. App. 2011). The defendant bears the burden of establishing that he was in custody for purposes of Miranda. State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010).

The test for determining whether an individual is in custody for purposes of Miranda is whether, objectively considering the totality of the circumstances surrounding an interrogation, there was a “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)). Relevant factors in making this determination include the time, location, public visibility of the interrogation, the conduct of the officers, the nature and manner of the questioning, the extent to which officers confront the suspect with evidence of his guilt, and the presence of other persons. State v. Albaugh, 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct. App. 1999); State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992).

The district court, objectively examining the totality of the circumstances, found that Hamlin was not in custody and, therefore, “the dictates of Miranda do not apply.”<sup>3</sup> (R., p.235.) Specifically, the district court found that:

1. Hamlin voluntarily appeared at the police station.
2. Even though not required, Detective Larsen read Miranda rights to Hamlin before any questioning began. Hamlin stated he understood. In watching the DVD, Hamlin seemed to clearly understand the questions and responded appropriately to the questions asked.
3. Detective Larsen was in plain clothes.
4. The DVD reveals and the Court finds the interview was not hostile or threatening or prolonged. Hamlin was not deprived of sleep, food, or water.
5. Detective Larsen did not restrain Hamlin or prevent him from leaving.
6. Detective Larsen did not communicate an intention to arrest Hamlin until the very end of the recorded interview.

(R., pp.235-36.) Those findings of fact are supported by the record (see 10/3/2011 Tr., p.85, L.16 – p.86, L.19; p.93, L.21 – p.94, L.23; State’s Ex. 100), and are undisputed on appeal. Based on the totality of those circumstances, the district court correctly determined that Hamlin was not in custody equivalent to formal arrest and properly denied Hamlin’s suppression motion.

On appeal, Hamlin “asserts that, because the Detective arranged the meeting, did not tell him he was free to leave, and read him his Miranda warnings, that [sic] he was in custody for purposes of Miranda.” (Appellant’s brief, pp.16-19.) None of these

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<sup>3</sup> During the hearing on the motion, defense counsel also acknowledged that “there was no argument that [Hamlin] was in custody.” (10/3/2011 Tr., p.131, Ls.18-24.)



factors clearly demonstrates custody for purposes of Miranda. Mere presence at a police station while talking to police is not the equivalent of formal arrest. See Mathiason, 429 U.S. at 495-96. That Detective Larsen invited Hamlin to come to the police station for an interview does not place Hamlin in custody equivalent to formal arrest. Rather, as found by the district court, Hamlin voluntarily presented himself at the police station and was not restrained or prevented from leaving. (R., p.235-36.) That is dispositive—For a suspect to be in custody for purposes of Miranda, a necessary condition is that his freedom of movement be curtailed. Maryland v. Shatzer, 559 U.S. 98, \_\_\_, 130 S.Ct. 1213, 1224 (2010). Because Hamlin's freedom of movement was not curtailed throughout the interview, he was not in custody.

The United States Supreme Court has previously explained:

Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there had been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which Miranda, by its terms was made applicable, and to which it is limited.

Mathiason, 429 U.S. at 495.

The facts found by the district court in relation to Hamlin's suppression motion do not establish that Hamlin was ever deprived of his freedom of action in a significant way so as to implicate Miranda. Hamlin was not subjected to a hostile, threatening, or prolonged interrogation. He stated that he understood what was happening and in fact appeared to understand, something Hamlin acknowledges on appeal. (Appellant's

brief, p.19.) He voluntarily came to the police station and was never restrained or prevented from leaving during the interview. Hamlin was not in custody for purposes of Miranda and has therefore failed to show error in the district court's denial of his suppression motion. The district court's order, denying Hamlin's suppression motion, should be affirmed.

#### CONCLUSION

The state respectfully requests that this Court affirm Hamlin's conviction and sentence.

DATED this 12th day of September, 2013.



RUSSELL J. SPENCER  
Deputy Attorney General

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of September, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER  
Deputy Attorney General

RJS/pm